

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

CROSSFIT, INC.

PLAINTIFF

VS

CIVIL ACTION NO. 1:13-CV-00144-GHD-DAS

COLUMBUS CROSSFITNESS LLC;
CHANCE WIYGUL; and JOHN DOES 1-25

DEFENDANTS

AFFIDAVIT OF MARSHALL S. BRENNER

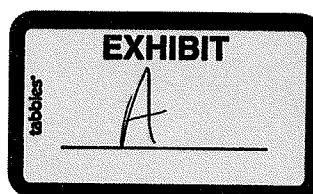
Marshall S. Brenner, before me, being duly sworn, deposes and says as follows:

1. I am Chief Litigation Counsel for CrossFit, Inc., the Plaintiff in this action. I have personal knowledge of the facts set forth herein, and am authorized to make this Affidavit on CrossFit's behalf. If called upon as a witness, I could and would testify competently under oath as to all such matters.

2. As CrossFit's Chief Litigation Counsel, I am readily familiar with CrossFit's business operations, including its fitness methodology, competitions, marketing efforts, licensing, and trademark protection efforts. I also have access to CrossFit's business records, including but not limited to its records pertaining to affiliate licensing.

3. CrossFit's fitness training paradigm is based on constantly varied, high-intensity and functional movement performed in small gym environments that foster natural camaraderie, competition, and the fun of sport. CrossFit specializes in fitness instruction in a class environment and is well-known for its distinctly named workouts, such as "Fran" or "Angie," which consist of varied functional movements at high intensity, all under time constraints.

4. Through its design, development, sales, and marketing activities, CrossFit has developed a revolutionary fitness training regimen that has become the principal strength and



conditioning program for many police academies, tactical operations teams, military special operations units, champion martial artists, and thousands of professional and amateur athletes in the United States and abroad.

5. CrossFit provides a nationally standardized certificate program to personal trainers who desire to become licensed CrossFit affiliates. Persons who successfully complete CrossFit's certificate program and meet other requirements for affiliation are eligible to enter into annually renewable affiliate license agreements which permit limited use of the CrossFit Marks subject to various conditions. CrossFit has over 9,000 affiliate gyms worldwide.

6. Only persons who have completed CrossFit's certificate process and entered into valid affiliate license agreements are permitted to use CrossFit's mark. Current, licensed CrossFit affiliates in Mississippi include DeSoto CrossFit in Southhaven, MS; Olive Branch CrossFit in Olive Branch, MS; CrossFit 27/17 in Flowood, MS; and Mississippi CrossFit in Ridgeland, MS.

7. In addition to its recognizable class workouts provided by local affiliates, CrossFit is widely recognized for its CrossFit Games, a fitness competition aired nationally by ESPN which, in 2013, welcomed over 70,000 competitors from 73 countries. At the 2013 CrossFit Games, elements of the competition required the athletes to walk on their hands for 90 feet, as well as perform handstand pushups, movements typically associated with overall body strength. Top CrossFit competitors have professional endorsements with various companies, including supplement companies. In addition, CrossFit also gained national exposure when it aired a television advertisement during the 2012 Super Bowl.

8. CrossFit has a strong internet/social media presence: the CrossFit.com website,

www.crossfit.com, has received at least 35 million hits annually from 2011 through the present, its Facebook page, *www.facebook.com/crossfit*, has over 500,000 "likes." CrossFit also maintains an active daily blog.

9. CrossFit has also partnered with fitness apparel companies, such as Reebok, to further market its brand. A true and correct copy of a Bloomberg News internet article regarding CrossFit's marketing partnerships is attached hereto as Exhibit 1 illustrating this venture.

10. CrossFit makes every effort to maintain detailed records regarding its licensed affiliates to ensure that only those who are authorized to do so are using the CrossFit Marks.

11. In my role as Chief Litigation Counsel, I have specific personal knowledge of the affirmative acts taken by CrossFit to diligently protect its intellectual property, including but not limited to trademark and service mark registration (the "CrossFit Marks"). Attached hereto as Exhibit 2 is a true and correct copy of CrossFit's Service Mark Registration No. 3,007,458, issued on October 18, 2005, for use in connection with fitness training services. Also attached hereto as Exhibit 3 is a true and accurate copy of CrossFit's Service Mark Registration No. 3,826,111, issued on July 27, 2010, for use in connection with the sale of clothing. I have specific personal knowledge that CrossFit's marks have been in continuous use in commerce since at least the dates of first use identified in their registrations to the present day.

12. My review of CrossFit's business records indicates that in October, 2012, CrossFit became aware that Chance Wiygul and the business entity Columbus CrossFitness, LLC, were using the CrossFit Marks without CrossFit's consent. Through further review of CrossFit's business records, I have confirmed that Chance Wiygul and Columbus CrossFitness, LLC, are not, and never have been, licensed CrossFit affiliates.

13. Upon information and belief based on CrossFit's investigation, Chance Wiygul and Columbus CrossFitness, LLC, began offering fitness training service under the names "CrossFitness" and "CrossFitness 24/7" ("Infringing Terms") in or around January 2013. Information developed by CrossFit indicated that the services offered at Mr. Wiygul's gym are based on the CrossFit training method.

14. Chance Wiygul and CrossFitness, LLC, advertise their fitness training services through the same marketing channels that CrossFit utilizes, making extensive use of interactive social media such as Facebook in the same manner as CrossFit. Defendants used a website with the address *www.crossfitness247.com* and advertised its e-mail address as *Crossfitnesscolumbus@gmail.com*. A true and accurate copy of Defendants' website display as found online on April 24, 2013 is attached hereto as Exhibit 4; cf. CrossFit's website, *www.crossfit.com* and its Facebook page, *www.facebook.com/crossfit*. Defendants' current website is found at *www.ironheartgym.biz* and Facebook page at *www.facebook.com/IronHeartGym247*.

15. Mr. Wiygul and Crossfitness's website described their exercise programs by including the infringing name, "Crossfitness," which is a confusingly similar version of the CrossFit Mark. The website *www.crossfitness247.com* included the following text: "What is CrossFitness? Crossfitness is a strength and conditioning program that is a cross between functional training coupled with cardiovascular training. CrossFitness follows the steps to build usable muscle, drop body fat percentage, increase cardiovascular stamina, and help you in the process to achieve your health & fitness goals." Exhibit 4. By their use of the gym's website and other internet sites, Defendants continuously encouraged the misconception that they are a

licensed CrossFit affiliate. The combined conceptual and commercial strength of the CROSSFIT® Marks weigh in favor of CrossFit's ability to establish a likelihood of consumer confusion due to the activities of Chance Wiygul and Crossfitness, LLC, described herein.

16. In its efforts to address Defendants' infringement of CrossFit's marks, in March and April, 2013, CrossFit corresponded with Defendant Chance Wiygul requesting that he cease and desist use of the name "CrossFitness" and other infringing marks in his business, including but not limited to his gym, on Facebook and on his website. Mr. Wiygul represented to CrossFit that its requests were being addressed, and agreed to remove his Facebook and website immediately, which prominently displayed the name "CrossFitness." However, despite his agreement to remove his infringing marks, he failed to take the steps represented. True and accurate copies of CrossFit's e-mail correspondence with Defendant Wiygul are attached hereto as collective Exhibit 5. As a result, CrossFit's counsel Christina Bobb was retained to undertake additional efforts to secure Defendants' cooperation in removing all illegal use of CrossFit's marks.

17. As of the date of this Affidavit, Defendants persist in their infringement of the CrossFit marks. Defendants' websites currently in use include photos that display infringing marks, suggesting an affiliation with CrossFit that never has existed. True and accurate copies of photos which are currently posted on Defendants' Facebook site are attached hereto as Exhibit 6. Defendants' limited liability company, Columbus CrossFitness, LLC, remains in good standing with the Mississippi Secretary of State. A true and accurate copy of the Mississippi Secretary of State's Business Services listing dated February 3, 2014 is attached hereto as Exhibit 7.

FURTHER AFFIANT SAYETH NOT.



MARSHALL S. BRENNER
CHIEF LITIGATION COUNSEL FOR
CROSSFIT, INC.

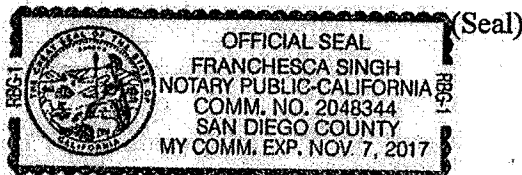
SWORN TO AND SUBSCRIBED BEFORE ME, this the 10th day of March, 2014.


NOTARY PUBLIC

My Commission Expires: Nov. 7, 2017

Prepared By: _____

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GULFPORT, MS 39502-0416
TELEPHONE: (228) 864-8117
FACSIMILE: (228) 864-6331

Bloomberg

Adidas to Make CrossFit Delta Logo Symbol for Reebok Fitness

By Julie Cruz - May 29, 2013

Reebok's CrossFit logo will become the symbol of the fitness brand as the Adidas AG (ADS) unit seeks to revive sales that have fallen for four of the last six years.

The red delta sign will be added to items from Reebok's fitness collection starting July 1, Adidas spokesman Lars Mangels said today.

Using the delta logo marks a recognition by Adidas of the need to rejuvenate a brand that has weighed on growth since it was acquired for \$3.8 billion in 2006. In choosing the CrossFit delta, the company is acknowledging the potential gains to be had from exploiting a top-selling Reebok product. Revenue at the CrossFit range rose 13 percent in the first quarter of 2013.

"The new logo will allow them to give their entire fitness category a new boost," said Gauthier Boche, associate strategy director at the London-based brand consultant Lothar Bohm Associates Ltd. "It's the right time to do so because they are surfing on CrossFit's wave of success."

Reebok initially forged a partnership with CrossFit Inc. gyms in 2010. The tie-up included sponsoring CrossFit Games, opening CrossFit studios and introducing the first co-branded footwear and apparel collection in fall 2011.

CrossFit, which promises a complete fitness routine in less than 30 minutes, has seen its popularity swell in the U.S. and Europe in recent years as people get hooked up on both its speed and being pitted against others.

CrossFit Fanatics

CrossFit fanatics "shop like crazy," Katja Erbe, brand director for Reebok in Germany, Switzerland and Austria, said in an interview at Adidas's headquarters in Herzogenaurach, Germany. "It's about having the latest gear. Reebok is the only brand that is offering CrossFit-specific products," including wider shoes and specific textile for apparel, she said.

EXHIBIT

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Adidas Chief Executive Officer Herbert Hainer has vowed to start an immediate revival at Reebok, whose sales declined in each of the three years after the acquisition and again last year. He introduced the "House of Fitness" project last year that aims to bill Reebok as a performance sports brand. The fitness brand will return to growth this year, he said.

"Our communication focus is almost exclusively on the performance angle," Erbe said.

Adidas's task in turning around Reebok won't be easy as combining products designed for high performance with casual sports products "appears particularly difficult," said Andreas Riemann, an analyst at Commerzbank AG in Frankfurt.

Still Unprofitable

Without Reebok, Adidas could achieve an operating margin close to 11 percent of sales in 2013, Riemann estimated in an April report, compared with the company's forecast of "a level approaching 9 percent." Riemann estimates that Reebok is still unprofitable before interest and tax and says Adidas's free cash flow would be as much as 150 million euros (\$193 million) higher without the brand.

Selling Reebok isn't part of Adidas's plans, according to Hainer. The CEO said in March that he remains committed to the brand, adding he doesn't see why it can't be successful.

To promote recovery, Reebok, which is using the motto "Live with Fire" this year, will continue to add new products. These include CrossFit apparel using so-called baremove+ technology that makes the wearer feel like they are naked when exercising, Erbe said.

Being edgy and provocative when it comes to style remains part of the brand's strategy, Erbe said, adding that Reebok's next dance-apparel collections will include prints such as camouflage or zebra.

"We need to be seen because the brand is currently not always at the top of people's minds like the two other big brands in the market," Erbe said, referring to Adidas and Nike Inc. "The collections and the campaign 'Live with Fire' have brought us visibility."

To contact the reporter on this story: Julie Cruz in Frankfurt at jcruz6@bloomberg.net

To contact the editor responsible for this story: Celeste Perri in Amsterdam at cperri@bloomberg.net

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 3,007,458

Registered Oct. 18, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

CROSSFIT

CROSSFIT, INC. (CALIFORNIA CORPORATION)
4135 GLADYS AVE.
SANTA CRUZ, CA 950624507

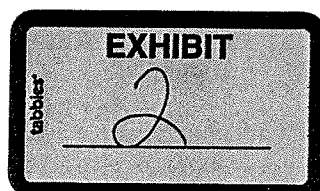
THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: FITNESS TRAINING, IN CLASS 41 (U.S.
CLS. 100, 101 AND 107).

SER. NO. 78-422,177, FILED 5-20-2004.

FIRST USE 1-1-1985; IN COMMERCE 1-1-1985.

RUSS HERMAN, EXAMINING ATTORNEY



H-1

United States of America

United States Patent and Trademark Office

CROSSFIT

Reg. No. 3,826,111

Registered July 27, 2010

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

CROSSFIT, INC (CALIFORNIA CORPORATION)
1250 CONNECTICUT AVE., N.W., SUITE 200
WASHINGTON, DC 20036

FOR: CLOTHING, NAMELY, SHIRTS, PANTS, SHORTS, JACKETS, SWEATSHIRTS,
SWEATPANTS, HEADWEAR, SOCKS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 9-0-2001; IN COMMERCE 9-0-2001.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,007,458.

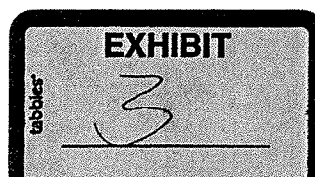
SN 77-718,844, FILED 4-21-2009.

WON TEAK OH, EXAMINING ATTORNEY

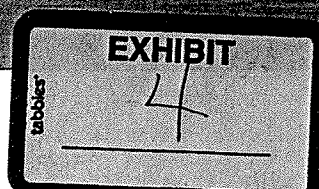
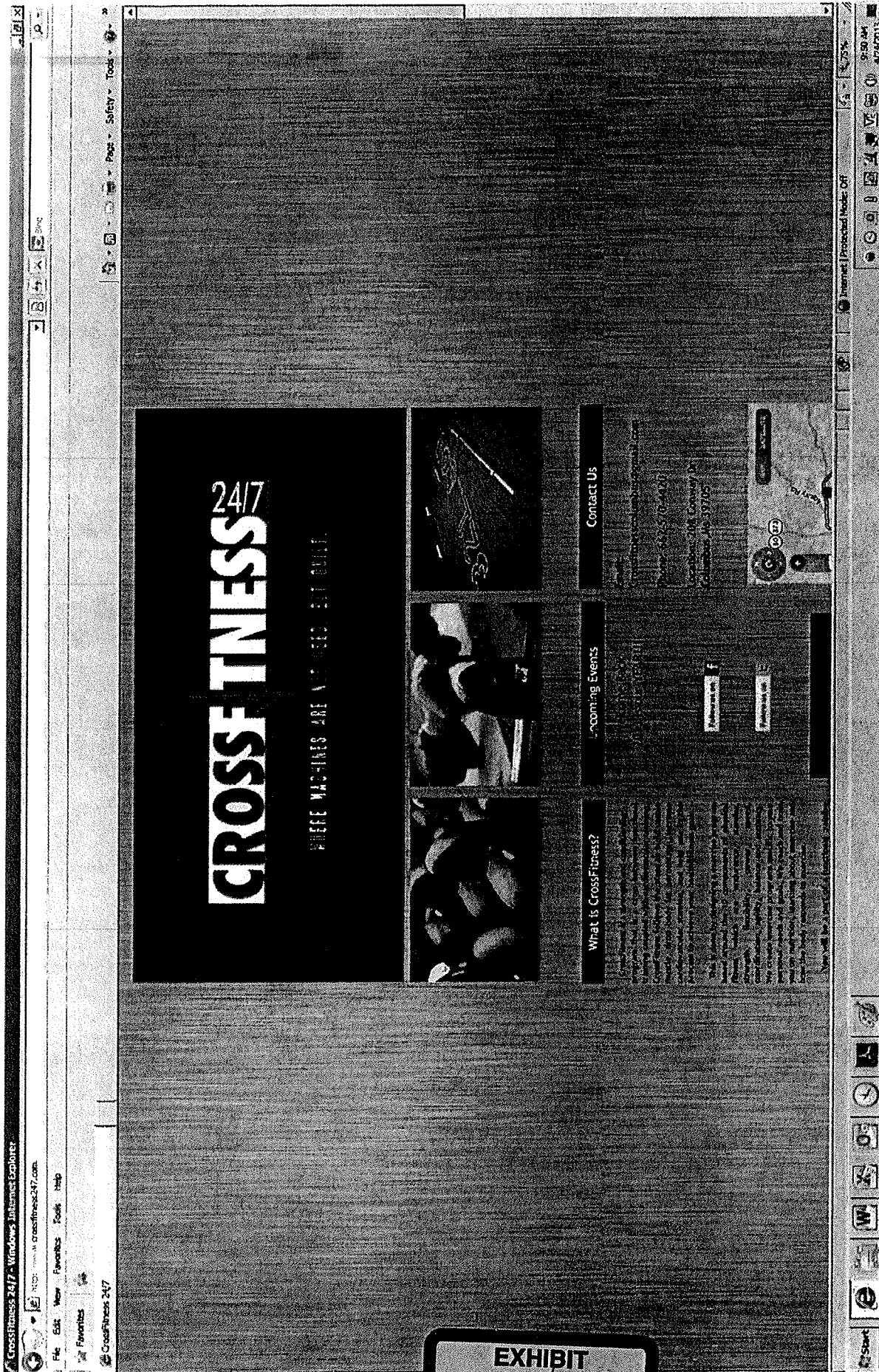


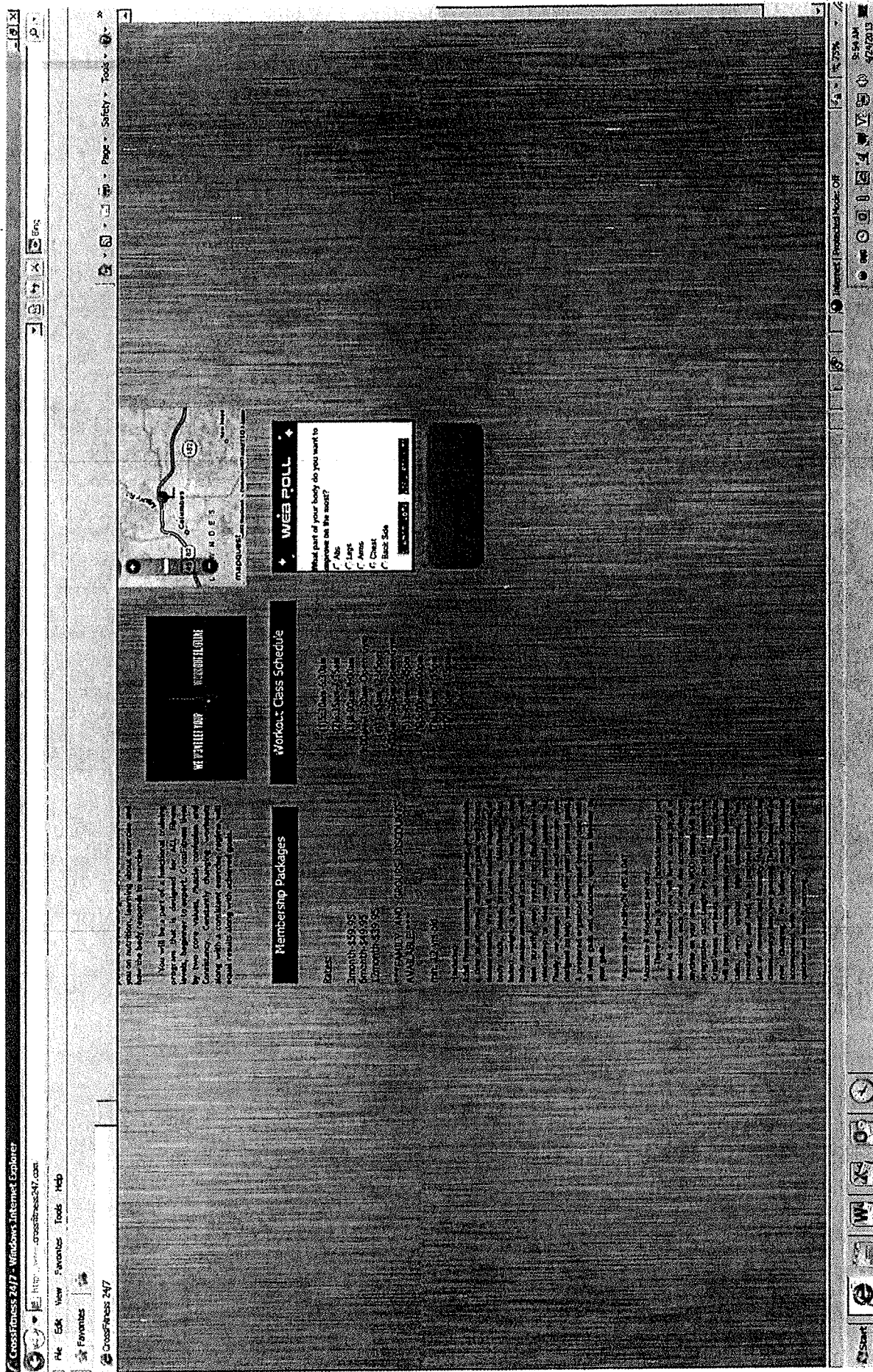
David J. Kappas

Director of the United States Patent and Trademark Office



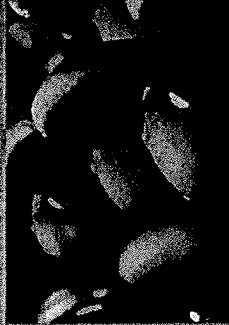
H-2





CROSSFITNESS^{24/7}

WHERE MACHINES ARE NOT USED BUT BUILT



What is CrossFitness?

CrossFitness is a strength and conditioning program that is a form of interval training designed with the goal of building fitness. CrossFitness follows the term to build a better muscle, drop body fat percentage, become cardiovascularly sound, and help with the process to achieve your personal fitness goals.

This is done by designing a exercise program based around the 10 components of physical fitness, which are endurance, strength, flexibility, power, speed, coordination, agility, balance and accuracy. We create exercise programs specific to your personal needs and goals. We push hard, train you on nutrition, learning about exercise and how the body responds to exercise.

You will be a part of a functional training



Upcoming Events

Warrior's Peak
2013-2014 (2013)

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Contact Us

Smith
crossfitnesscolumbus@gmail.com
Phone: 662-370-4620
Location: 208 Conway Dr
Columbus, MS 39705



From: Lindsay Gonzalez [<mailto:lindsay@crossfit.com>]
Sent: Monday, April 15, 2013 6:14 AM
To: chance wiygul; Bobb, Christina G.
Cc: Dale Saran
Subject: Re: CrossFitness 24/7

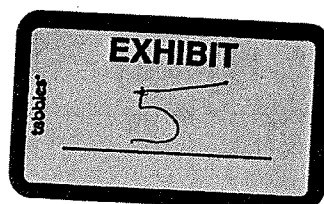
Chance,

I have tried working with you. I thought we had an agreement that you would immediately take down your Facebook and website. That was supposed to have happened a couple of weeks ago. Those are changes that can easily be made and I gave you a weeks time to make it happen. If you had made good on your word, I was willing to work with you on the other items.

I am not threatening to sue you. It is a reality. If you don't cease infringement of our mark by April 19 we will file a lawsuit. I have copied our outside counsel on this email. Christina will take over the issue if you insist on continuing to use our mark.

Lindsay

On Thu, Apr 11, 2013 at 9:04 AM, chance wiygul <crossfitnesscolumbus@gmail.com> wrote:
Lindsay, I apologize for nothing being in contact with you. Where as I have been out of town for the past week. I do not have an attorney on retainer as of now. After our talk I sought a consultation to help move forward. I am just attempting to transition directly over to make it smooth and easy so everyone is happy. I have been working diligently on your requests. I have a new design(logo)(mark), and also have filed for a new license and restructure under said in "logo". I can send you a secured doc* of our logo to let you see our mark. As well, as as a receive my new paperwork for our new company I can update you if you wouldn't mind? We are in the process of a big transition for us on our small level, so we are working on this along side with transitioning our facility. I hope to have your support in attempting to just do as you say, rather than understand and articulate answers to the questions I had. You have threatened me multiply times now with a lawsuit. So, here is my attempt to make things right and do "as you say", if you would like to work together feel free to contact me and we will stay updated. However, if you want to continue with threats of lawsuit please severe all contact with me. Anything threats will be considered harassment and an act of aggression and intimidation.



I am a nice hardworking person, I have put in 1,000's of hrs building something and just "taking your word for it" on restructuring my entire model, I want to work together but will not be intimidated nor threatened. I hope to be on good terms with you and work together.

On Wed, Apr 10, 2013 at 8:35 PM, Lindsay Gonzalez <lindsay@crossfit.com> wrote:
Chance,

Can you put me in contact with your attorney? I would like to speak with him/her regarding your email dated 4/1/13.

If I do not hear from you by end of the week, I will have no choice but to move forward with filing a lawsuit in federal court.

--
Regards,

Lindsay Gonzalez
CrossFit, Inc., Legal Department
(248) 722-1099

--
Regards,

Lindsay Gonzalez
CrossFit, Inc., Legal Department
(248) 722-1099



Christina G. Bobb | Attorney At Law

Phone (619) 236.1551

Fax (619) 696.1410

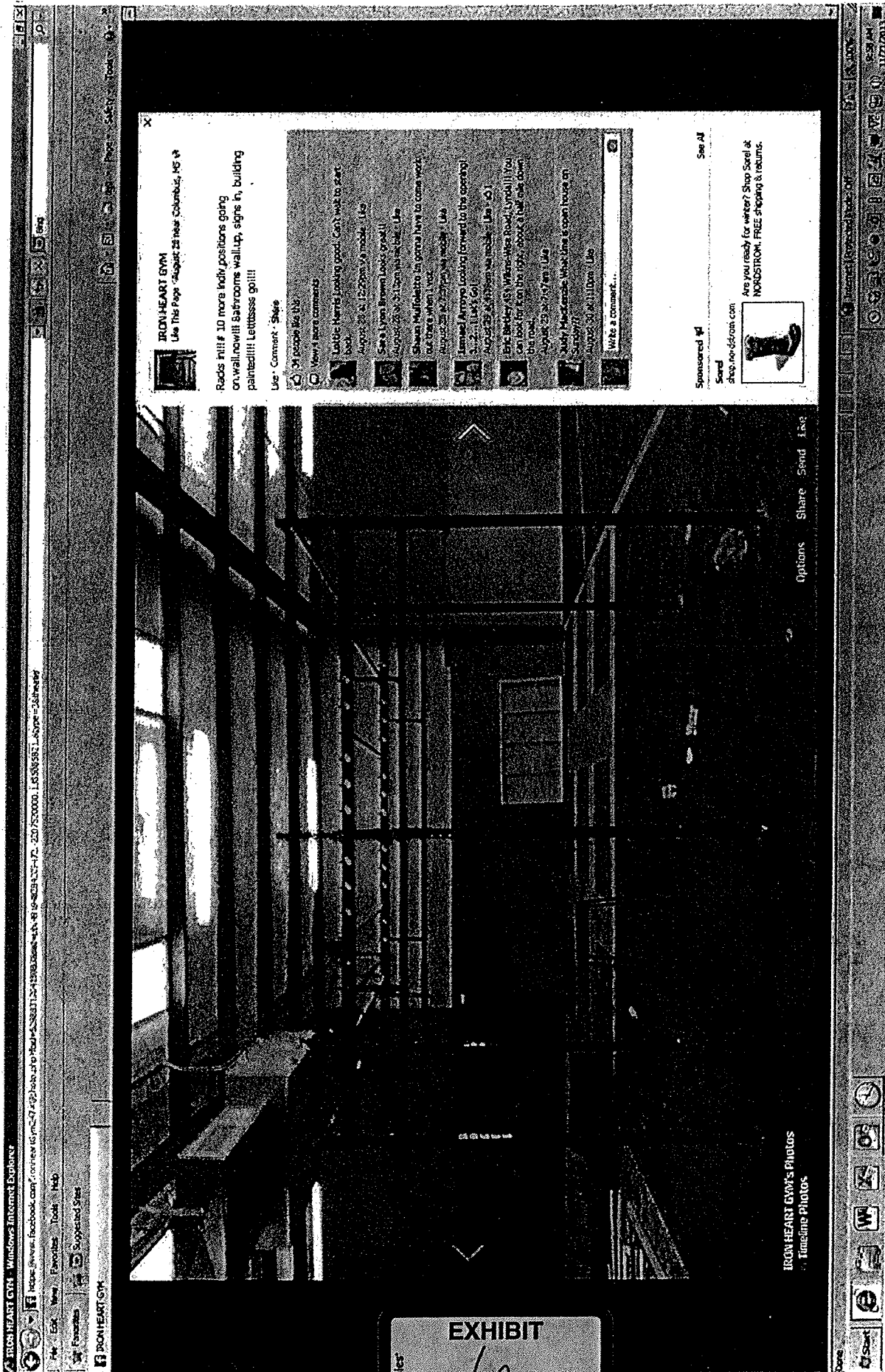
Email cbobb@higgslaw.com

401 West A Street, Suite 2600, San Diego, CA 92101

www.higgslaw.com

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EXHIBIT

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IRON HEART GYM
 Like This Page · August 28 near Columbus, MS

Racks in!!! # 10 more indiv positions going on wall now!!! Bathrooms wall up, signs in, building painted!!!! Lettissess go!!!!

Like · Comment · Share

34 people like this.

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Lottie Harris Looking good! Can't wait to start back.

August 28 at 12:28pm via mobile · Like

Sara Lyon Brown Looks great!!

August 28 at 3:13pm via mobile · Like

Shaun Muffoletto Im gonna have to come work out there when I visit

August 28 at 7:59pm via mobile · Like

Ismael Arroyo Looking forward to the opening!

3.2.1 Let's Go!

August 29 at 4:59am via mobile · Like · 23.1

Eric Bartley 151 Wilkins Wise Road, Lyndell!!! You can look for it on the right, about a half mile down the road.

August 29 at 7:47am · Like

Judy MacKenzie What time is open/pause on Sunday??

August 30 at 1:10pm · Like

Write a comment...

Sponsored

See All

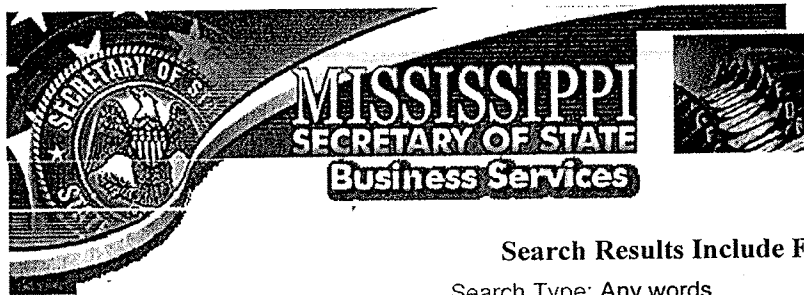
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HEART GYM's Photos

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 - By Officer Name
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 - New Corporations
 - Annual Report
 - File Corporate Annual Report
 - File LLC Annual Report
 - Verification
 - Verify Certification
 - Online Orders
 - Register for Online Orders
 - Order Good Standing
 - Miscellaneous
 - Look Up an SIC



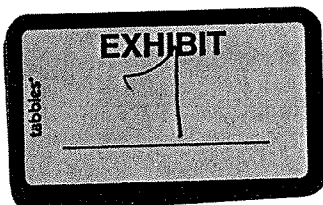
Search Results Include Filings Through 03/06/2014 12:00 AM

Search Type: Any words
Search Date: 3/14/2014

Search Criteria: crossfit
Search Time: 10:41

Click on the Business Entity Name or Charter Number to view more information.

Business Entity Name	Business ID	Type	Status	Entity Creation Date
BoxLife CrossFit DBA	1030695	Limited Liability Company	Good Standing	11/4/2013
BoxLife Crossfit LLC	1030695	Limited Liability Company	Good Standing	11/4/2013
Columbus Crossfitness LLC	994408	Limited Liability Company	Good Standing	1/17/2012
Crossfit 27:17, LLC	943812	Limited Liability Company	Good Standing	1/21/2009
CrossFit 38655 DBA	999583	Limited Liability Company	Good Standing	4/9/2012
CrossFit Biloxi Beach, LLC	949883	Limited Liability Company	Dissolved	5/22/2009
Crossfit By The Bay, LLC	1030712	Limited Liability Company	Good Standing	11/4/2013
Crossfit Evolution, LLC	960116	Limited Liability Company	Good Standing	1/11/2010
CrossFit Hattiesburg, LLC	921863	Limited Liability Company	Dissolved	11/5/2007
CrossFit Kids Hattiesburg, Inc.	969178	Business Corporation	Good Standing	7/20/2010
Crossfit Portside, LLC	1026138	Limited Liability Company	Good Standing	8/13/2013
CrossFit Tupelo LLC	995108	Limited Liability Company	Good Standing	1/30/2012
CrossFit Warped DBA	1014236	Limited Liability Company	Good Standing	1/17/2013



<u>Crossfit Yune'lt, LLC</u>	<u>1006165</u>	Limited Liability Company	Good Standing	8/6/2012
<u>Desoto Crossfit, LLC</u>	<u>936866</u>	Limited Liability Company	Good Standing	8/18/2008
<u>Gulf Coast Crossfit LLC</u>	<u>1030712</u>	Limited Liability Company	Good Standing	11/4/2013
<u>Gulfport CrossFit LLC</u>	<u>1011113</u>	Limited Liability Company	Good Standing	11/13/2012
<u>Mississippi Crossfit, LLC</u>	<u>995932</u>	Limited Liability Company	Good Standing	2/13/2012
<u>MS Crossfit, Inc.</u>	<u>939071</u>	Business Corporation	Dissolved	10/2/2008
<u>Olde Towne Crossfit, LLC</u>	<u>993915</u>	Limited Liability Company	Good Standing	1/4/2012
<u>Olive Branch CrossFit DBA</u>	<u>1015386</u>	Business Corporation	Good Standing	2/7/2013
<u>P360 Powered by Mississippi CrossFit, LLC</u>	<u>995788</u>	Limited Liability Company	Good Standing	2/9/2012
<u>UDC CrossFit Oxford, LLC</u>	<u>996561</u>	Limited Liability Company	Dissolved	2/24/2012

Records Returned 1 to 23

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